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GENERAL COUNSEL'S OPINION NUMBER 58-1, DATED 29 APRIL 1958

Where the rental allowance of a contract employee is tied directly by his contract to that of a specific GS grade, as provided by Standardized Regulations (Government Civilians, Foreign Areas), he may not be reimbursed for rental expended in excess of that amount unless an increased amount is authorized prospectively by headquarters in accordance with applicable Agency regulations.

TO CHIEF, IO DIVISION

25X1A 1. We have received the memoranda and other documents referring to the claim of Mr. M, a contract employee. The claim covers the period 1 January 1955 through 12 July 1956. During this period M resided in personally obtained quarters [] and received a Quarters Allowance in accordance with the Standardized Regulations (Government Civilian, Foreign Areas). The amount received by M was less than the amount actually spent by him on quarters and was also less than the maximum rate allowed staff employees of comparable rank through the device of organization-provided housing [] M seeks reimbursement for that portion of his excess housing expenses representing the difference between the quarters allowance he received and the maximum rental allowed at [] station for organization-provided quarters []

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2. The entitlements of a contract employee are ordinarily determined by reference to the terms of his contract. The record discloses that "M's contract, effective 1 April 1954, provides a 'Living Quarters Allowance' equivalent to those granted a GS-11 Government Employee stationed at the same permanent post of duty in conformance with and at the rates prescribed in the Standardized Regulations (Government Civilian, Foreign Areas)." The contract specifically related M's entitlement to the Standardized Regulations and in so doing set forth clearly the limits of that entitlement.

25X1A 3. It is stated at one point in the record that "others in his position were being provided quarters under the provisions of [] If others in his position (i.e., other employees with similar contracts) were being provided quarters [] they were being done so without authority and therefore improperly.

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25X1A 4. Paragraph 7e of [] reads as follows:

"The provisions of this regulation are generally applicable only to staff employees and staff agents. They may be applied to other personnel utilized by the Organization only with the prior approval of headquarters."

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SECRET

Page 2 - General Counsel's Opinion No. 58-1

Since M was not a staff employee or staff agent, and since there was no prior approval, it must follow that the provisions of this regulation may not be applied to him.

5. Even if M's contract had provided for benefits [] the failure of the Chief of Station to make the necessary determinations under that regulation would have been fatal. The pertinent provisions of that regulation is paragraph 7, "Applicability and Implementation." Under that heading, paragraph 7a(2) provides in part:

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"Where the personally-secured quarters of the individual are [in] the opinion of the Responsible Field Official both reasonable and adequate, the terms of the lease are satisfactory, and the rental costs are comparable to prevailing rental costs, the Responsible Field Official may take over such quarters as Organization quarters in accordance with the procedures set forth in paragraph 5."

Paragraph 5b(1) states:

"Where it is necessary, in the judgment of the Responsible Field Official, to exceed the maximum quarters allowance authorized to the individual as established in the Standardized Regulations (Government Civilian, Foreign Areas) in order to obtain housing of the standard set forth in 3a(1), he shall execute a written statement establishing the reasonableness of the quarters provided and the cost thereof as related to the grade of the employee and the local housing situation. This statement shall be retained in station files with a copy of the lease for review and inspection."

We do not believe the spirit of these provisions, much less the letter, could be complied with post factum. This is the view we took in our opinion issued in an earlier case on a related subject, and discussed by you in connection with the present case. The conclusion in that case was stated as follows: "But further, we believe, these quarters must be 'considered adequate' by the Chief of Station while the individual continues to occupy them This is implicit in the fact that the effect of the Chief of Station determination of adequacy is to make the quarters 'Organization quarters.' It would seem anomalous that this could be done at a time when conceivably the quarters were no longer occupied by Agency personnel." In short, it is our opinion that [] is prospective in application.

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6. M's contract granted him the maximum quarters allowance allowable under the Standardized Regulations; this he received. There is no reason why the application of [] should have been considered in the face of plain contractual stipulations to the contrary. And inasmuch as that regulation may not now be applied, as we have stated above, the claim may not be paid.

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